

## **EXHIBIT A**

JS 44 (Rev. 3/99)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Steven R. Kincaid

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

John Harkavy, Esq. Bernkopf Goodman LLP  
125 Summer Str., 13th Fl., Boston MA 02110 617-790-3000

Deborah Martin Norcross, Esq.  
60 Marion Rd. West, Princeton, NJ 08540 609-279-0191

## DEFENDANTS

2004 JUL -7 P 2:36  
Bank of America Corporation

U.S. DISTRICT COURT  
County of Residence of First Listed Plaintiff  
DISTRICT OF MASS.  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

04 CV 11522 JLT

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF  
Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 5 DEF  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> Federal Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 383 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405 (g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fed. Detention Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Age Discrimination in Employment Act of 1967 for unlawful discrimination and retaliation

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$ To be determined**

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE July 7, 2004

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED

1. Title of case (name of first party on each side only) Steven R. Kincaid vs. Bank of America Corporation

2. Category in which the case belongs based upon the numbered nature of suit code listed on the Civil Cover Sheet. (See

local rule 40.1(a)(1)).

☐

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT

☒

II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 880, 882-894, 895, 950.

\*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

☐

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

☐

IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

☐

V. 150, 152, 153.

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3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☐NO ☒

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐Central Division ☐Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☒Central Division ☐Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME John HarkavyADDRESS 125 Summer Str., 13th Fl. Boston, MA 02110TELEPHONE NO. 617-790-3000

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FILED  
IN CLERK'S OFFICE

2004 JUL -7 P 2:46

U.S. DISTRICT COURT  
DISTRICT OF MASS.

STEVEN R. KINCAID,

Plaintiff,

vs.

BANK OF AMERICA CORPORATION,

Defendant.

Civil Action No.

COMPLAINT AND JURY  
DEMAND

04cv11522 JLT

**NATURE OF THE ACTION**

1. This is an employment termination action brought under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621 *et seq.* (ADEA) for unlawful discrimination and retaliation; and for wrongful discharge in violation of public policy and breach of the implied covenant of good faith and fair dealing under state law.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over Plaintiff's federal law claims under 28 U.S.C. §1331 and supplemental jurisdiction over Plaintiff's pendant state law claims under 28 U.S.C. §1367(a).

3. Plaintiff has complied with all conditions precedent to the filing of this action:

a. On July 25, 2003, Plaintiff filed a timely charge of employment discrimination on the bases of age and retaliation with the Equal Employment Opportunity Commission (EEOC).

b. On April 8, 2004, Plaintiff received a Notice of Right to Sue issued by the EEOC.

c. This complaint is filed within ninety (90) days of Plaintiff's receipt of the EEOC's Notice of Right to Sue.

4. Plaintiff resides, and Defendant maintains offices and conducts substantial business, within the District of Massachusetts. Venue therefore is proper in this District under 28 U.S.C. §§1391(b) and (c).

#### **PARTIES**

5. Plaintiff Steven R. Kincaid is a citizen of the United States and resides at 8 Towne Lane, Topsfield, Massachusetts.

6. Plaintiff's date of birth is July 19, 1953.

7. At all times relevant to this action, Plaintiff was and is a member of the class of persons protected by the ADEA.

8. Upon information and belief, Defendant Bank of America Corporation is a Delaware corporation with its principal place of business located at 201 North Tryon Street, Charlotte, North Carolina.

9. Upon information and belief, Defendant owns and operates more than 250 banking centers and more than 1290 automated teller machines (ATMs) within the District of Massachusetts.

10. Defendant is engaged in an industry affecting commerce.

11. Defendant employs twenty (20) or more employees.
12. Defendant is an employer within the meaning of §11(b) of the ADEA, 29 U.S.C. §630(b).

#### FACTS

13. In and before 2002, Plaintiff operated a consulting business located at 11 Carleton Circle, Boxford, Massachusetts, where Plaintiff also resided.
14. In or around the spring of 2002, a management recruiting firm contacted Plaintiff at his Massachusetts office/residence for the purpose of recruiting Plaintiff for employment with Defendant.
15. Thereafter, the recruiter and representatives of Defendant interviewed Plaintiff in telephone conferences placed to Plaintiff's office/residence in Massachusetts. Defendant also paid for Plaintiff to travel to North Carolina for in-person interviews.
16. In or around July 2002, Defendant offered Plaintiff a position as Vice President, Market Information Manager in Charlotte, North Carolina. The offer was extended through a telephone call placed to Plaintiff's office/residence in Massachusetts and confirmed in a letter sent to Plaintiff in Massachusetts.
17. In seeking to persuade Plaintiff to relocate from Massachusetts to North Carolina and thereby obtain for itself a statistical analysis methodology Plaintiff had developed, Defendant promised Plaintiff long-term employment and fair treatment free of unlawful discrimination.
18. The recruiter asked Plaintiff if he would be comfortable reporting to someone with less experience.

19. Defendant advised Plaintiff he would have three primary projects: to develop a definition of customer loyalty, to develop a statistical driver monograph, and to develop a means of valuing loyalty.

20. Defendant promised to continue to employ Plaintiff in a position commensurate with his experience and background once the primary projects were completed.

21. In reliance on Defendant's promises, Plaintiff relocated to North Carolina and commenced employment with Defendant on or about August 20, 2002.

22. Plaintiff's area of expertise was and is the design and overhaul of methodology used to perform statistical analyses. Plaintiff's first assignment after commencing employment with Defendant was to create a statistical driver monograph detailing this methodology.

23. Plaintiff's immediate supervisor was Sheila Burroughs (Burroughs). Upon information and belief, during the time Plaintiff was employed by Defendant, Ms. Burroughs was approximately 33 years old.

24. Burroughs and other management directed Plaintiff to write the monograph "as if he would be hit by a bus" as soon as it was completed.

25. Plaintiff began writing the monograph and working on the definition of loyalty project soon after beginning his employment with Defendant.

26. Plaintiff completed the monograph in or around January 2003.

27. Between Plaintiff's date of hire and the date on which he completed the monograph, Burroughs praised Plaintiff's work performance as excellent and did not, on any occasion, criticize any substantive aspect of Plaintiff's performance.

28. After completing the monograph, and performing substantial work on the loyalty definition project, and after Defendant had obtained the benefit of Plaintiff's years of experience, knowledge, and expertise, Burroughs' approach to Plaintiff and his work performance changed dramatically.

29. Burroughs began harassing Plaintiff and giving him conflicting instructions in an effort to ensure that Plaintiff would be unable to meet his 2003 performance goals. For example:

- a. Burroughs delayed release of the statistical driver monograph for more than ten weeks after its completion, thus preventing Plaintiff from demonstrating his leadership and consulting skills on the main project in which he was engaged.
- b. Burroughs ordered Plaintiff not to attempt to lead the loyalty valuation work, then improperly criticized him for not showing "ability to lead the valuation topic."
- c. Burroughs ignored or rejected Plaintiff's suggestions relating to, for example, scales in measurement and customer satisfaction surveys, then improperly criticized him for failing to exhibit and communicate strategic thinking.
- d. Burroughs ordered Plaintiff not to engage other financial staff in the definition of loyalty project, saying she wished to do so herself. She failed to follow through at all, making it impossible for Plaintiff to complete the project. Burroughs then criticized Plaintiff for not concluding the project.



e. When Plaintiff requested time off to attend his grandmother's funeral in Oklahoma, Burroughs set an arbitrary deadline for a small work project and made it clear that he would not be able to complete the work on time if he attended the funeral.

30. Upon information and belief, Plaintiff was the oldest employee, and most highly compensated employee at his level, in his department.

31. Upon information and belief, Defendant, having obtained Plaintiff's unique methodology, began harassing Plaintiff in an attempt to force him to resign and thereby rid itself of an older, highly compensated employee.

32. Upon information and belief, Defendant's treatment of Plaintiff was consistent with its pattern of forcing the resignations of other employees in the protected age group.

33. Upon information and belief, Defendant had a practice of firing older workers to manipulate earning results and to avoid the severance payments and financial accountability that would accompany layoffs.

34. By letter dated April 25, 2003, Plaintiff, through his counsel, registered a written discrimination complaint with J. Steele Alphin, Corporate Personnel Executive for Defendant.

35. By letter dated April 30, 2003, Eric A. Montgomery, Assistant General Counsel for Defendant, acknowledged receipt of Plaintiff's complaint and advised, "We are investigating the facts and circumstances of your client's claim and will respond to your letter shortly."

36. Defendant never responded to Plaintiff's complaint. Upon information and belief, Defendant did not conduct any investigation into Plaintiff's discrimination claims.

37. Instead, Defendant terminated Plaintiff's employment, without notice or cause, on June 13, 2003. Upon information and belief, Defendant retained younger, less qualified similarly situated employees who had not complained of discrimination.

38. Upon information and belief, Defendant harassed and discharged Plaintiff because of Plaintiff's age, in retaliation for Plaintiff's complaint of unlawful discrimination, in violation of public policy, and in violation of the implied covenant of good faith and fair dealing.

39. In engaging in the acts described above, Defendant acted knowingly, willfully, and maliciously.

40. As a result of Defendant's acts as described above, Plaintiff has suffered damage, including without limitation: termination of employment; deprivation of income and benefits; loss of future earning capacity; loss of future income and benefits; damage to career and reputation; and pain and suffering, emotional distress, and mental anguish.

**COUNT ONE**  
**AGE DISCRIMINATION IN VIOLATION OF 29 U.S.C. §621 ET SEQ.**

41. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 40 above as if fully set forth herein.

42. Defendant harassed Plaintiff and terminated Plaintiff's employment because of Plaintiff's age.

43. Defendant's termination of Plaintiff because of his age violated §4(a)(1) of the ADEA, 29 U.S.C. §623(a)(1).

44. Defendant's discrimination against Plaintiff was willful and undertaken with malice and reckless indifference to Plaintiff's federally protected rights.

45. As a result of Defendant's unlawful acts, Plaintiff has been damaged as described above.

**COUNT TWO  
RETALIATION IN VIOLATION OF 29 U.S.C. §623(d)**

46. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 45 above as if fully set forth herein.

47. Defendant harassed Plaintiff and terminated Plaintiff's employment because Plaintiff opposed Defendant's discriminatory practices and because of Plaintiff's assertion of his rights under the ADEA, in violation of §4(d) of the ADEA, 29 U.S.C. §623(d).

48. As a result of Defendant's unlawful acts, Plaintiff has been damaged as described above.

**COUNT THREE  
WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY**

49. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 48 above as if fully set forth herein.

50. Defendant's harassment of Plaintiff and termination of Plaintiff's employment violated public policy as set forth in the North Carolina Equal Employment

Practices Act, Ch. 143, Secs.143-422.1 through 143-422.3 of the North Carolina General Statutes, and in the North Carolina Retaliatory Employment Discrimination Law, Ch. 95, Sec. 95-240 through 95-245 of the North Carolina General Statutes.

51. As a result of Defendant's unlawful acts, Plaintiff has been damaged as described above.

**COUNT FOUR  
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR  
DEALING**

52. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 51 above as if fully set forth herein.

53. Defendant's acts as described above breached the implied covenant of good faith and fair dealing that existed in Plaintiff's at-will employment contract.

54. As a result of Defendant's unlawful acts, Plaintiff has been damaged as described above.

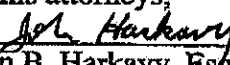
**WHEREFORE**, Plaintiff respectfully requests that the Court award the following relief:

- 1) Judgment declaring that Defendant's acts violated Plaintiff's rights as secured by applicable federal and state laws;
- 2) Damages to make Plaintiff whole, including but not limited to back pay with interest, adjusted for any increase Plaintiff would have received had he not been unlawfully terminated; reimbursement of Plaintiff's lost benefits and replacement costs; and reimbursement for medical, relocation, and other costs

resulting from Plaintiff's termination, all in an amount to be determined at trial;

- 3) Front pay in lieu of reinstatement;
- 4) Compensatory damages, including but not limited to emotional distress, pain and suffering, and mental anguish; and relocation, job search, business development, and other damages incurred by Plaintiff as a result of his unlawful termination.
- 5) Punitive damages in an amount not less than \$5,000,000;
- 6) Liquidated damages for Defendant's willful violation of the ADEA;
- 7) Attorneys' fees, interest, costs, and disbursements; and
- 8) Such other relief as the Court deems just and proper.

**PLAINTIFF REQUESTS TRIAL BY JURY**

Plaintiff,  
STEVEN R. KINCAID  
By his attorneys,  
  
John B. Harkavy, Esquire, BBO No. 541900  
BERNKOPF GOODMAN LLP  
125 Summer Street, Suite 1300  
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Of Counsel:  
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Princeton, New Jersey 08540  
Telephone: (609) 279-0191  
Facsimile: (609) 279-0526  
*(Motion for Admission Pro Hac Vice to be Filed)*  
#294004 v1/99999/1

Dated: July 6, 2004

## **EXHIBIT B**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

STEVEN R. KINCAID,

Plaintiff,

v.

BANK OF AMERICA CORPORATION,

Defendant.

Civil Action No. 04-11522-WGY

PLAINTIFF'S SUPPLEMENTAL ANSWERS TO  
DEFENDANT'S FIRST SET OF INTERROGATORIES

Interrogatory No. 4

Describe each way you contend you were injured or have suffered damages, including but not limited to, (a) state the total amount of damages claimed and a computation of each category of damages you claim; (b) STATE THE BASIS upon which you rely to support each element of damages claimed; (c) state the methods, theories and calculations by which you arrived at the claimed dollar amounts of each element of damages claimed; (d) IDENTIFY any person whom you know of whom you believe has the knowledge of the basis for and calculation of such damages; and (e) IDENTIFY the person(s) who calculated the amount of each such element of damages.

Answer No. 4

Plaintiff objects to this interrogatory on the ground it is premature. Plaintiff will seasonably supplement this Answer in the near future.

Supplemental Answer No. 4

Plaintiff contends that he has suffered the following categories of damages: (1) back pay with interest, adjusted for any increases plaintiff would have received had he not been unlawfully terminated; (2) lost bonuses; (3) replacement cost for lost benefits; (4) front pay in lieu of reinstatement; (5) compensation for loss of pension and other benefits in retirement; (6) reimbursement for relocation and other costs resulting from plaintiff's termination; (7) compensation for vocal cord paralysis plaintiff suffered as a result of defendant's tortious conduct; (8) compensatory damages for emotional distress, pain and suffering, and mental anguish; (9) relocation, job search, business development and other damages incurred by plaintiff as a result of his unlawful termination; (10) punitive damages; (11) liquidated damages for defendant's willful violation of the ADEA; and (12) attorney's fees, interest, costs and disbursements.

As to the amount of, and calculation of, each category of damages, and as to the basis for plaintiff's claim in each case, plaintiff anticipates relying on further fact discovery (in addition to the fact discovery to date) and on expert testimony. Accordingly, plaintiff will seasonably supplement this Answer when he completes his fact discovery and submits the reports from his experts.

Interrogatory No. 6

State whether Plaintiff ever destroyed or deleted any documents, including e-mails, CONCERNING Plaintiff's employment with Bank of America and IDENTIFY each such document and/or e-mail; and state the date or approximate date on which it what [sic] destroyed and/or deleted.

Answer No. 6

Plaintiff objects to this interrogatory on the ground it is vague and overbroad.



Without waiving the foregoing objection, and construing the interrogatory as referring to the time period during which plaintiff was employed by defendant, plaintiff states:

Plaintiff's usual practice was to retain all substantive e-mails until they were automatically deleted, after 90 days, by defendant's system. Plaintiff would delete non-substantive broadcast e-mails, like the announcement of the corporate blood drive or the United Way campaign, as soon as he had read them. Plaintiff used e-mails as a filing system rather than printing out e-mails and putting them into a paper file.

On June 13, 2003, the day of plaintiff's termination, plaintiff did not have the opportunity to print out or otherwise save e-mails because he was required to leave the premises in under two hours. Had plaintiff been given the opportunity to go through his files and e-mails, he would have printed out relevant e-mails, and retrieved and saved other important documents.

Supplemental Answer No. 6

Renewing his original objection and without waiving that objection, plaintiff states: Construing defendant's Interrogatory in response to defendant's request as also referring to the time period since plaintiff was terminated by defendant, plaintiff supplements his original Answer to state that, since being terminated by defendant, plaintiff has not destroyed or deleted any documents concerning plaintiff's employment with defendant.

Interrogatory No. 7

IDENTIFY any and all e-mail communications you believe are relevant to your claims which could have been found at any time within the Bank of America electronic e-mail system.

Answer No. 7

Plaintiff objects to this interrogatory as vague and overbroad.

Without waiving the foregoing objection, plaintiff states that the relevant e-mail communications ("e-mails") which could have been found include, without limitation: (i) e-mails showing the work done by plaintiff for defendant, and the quality of that work; (ii) e-mails showing the positive feedback plaintiff received regarding his work from a wide array of individuals including, without limitation, Sheila Burroughs and Alec Kotopoulos; (iii) e-mails showing that the criticisms of plaintiff's work made by Sheila Burroughs starting in April 2003 were vague, unspecific, inconsistent, undocumented and/or inaccurate; (iv) e-mails exhibiting age bias in plaintiff's case and in the case of other employees of the defendant; (v) e-mails concerning claims of age discrimination, retaliation and harassment made by other employees of the defendant; (vi) e-mails supporting each point enumerated in Answer No. 1 above.

Supplemental Answer No. 7

Renewing his original objection and without waiving that objection, plaintiff states: In response to defendant's request that plaintiff identify specific e-mail communications to the extent plaintiff is able to do so, and believing that the Interrogatory does not ask plaintiff to identify communications that defendant has produced in discovery, plaintiff supplements his original Answer to identify the following specific e-mail communications that plaintiff believes could have been found (assuming they were not deleted or otherwise destroyed) but which defendant has not produced:

1. Alec Kotopolous's cover e-mail (dated, to the best of plaintiff's recollection in February 2003) that accompanied the general sendout of plaintiff's statistical monograph to the entire CAMR department;

2. Sheila Burrough's e-mail to plaintiff in October or November 2002 congratulating plaintiff on plaintiff's idea regarding replacing confidence intervals in the branch customer satisfaction work;

3. E-mail to plaintiff in February or March 2003 from Kim Steinbruck (member of Alan Church's work group ) regarding plaintiff's work helping her rewrite survey questions and conduct statistical analysis for her clients;

4. E-mail (possibly several ) to plaintiff from Bonnie Harrell in January or February 2003 (after she left CAMR) regarding plaintiff's work helping her rewrite survey questions and conduct statistical analysis for her clients;

5. Chuck Andrew's e-mail to plaintiff in December 2002 thanking plaintiff for testing plaintiff's driver methodology on his credit card data and congratulating plaintiff on the success of the methodology;

6. E-mail to plaintiff from Maggie Huggins in March or April 2003 (after she left CAMR) thanking plaintiff for helping her rework her analysis plan for customer data gathered in the bank's Online business; and

7. E-mail (possibly several) to plaintiff from David Lee in March or April 2003 in the Investment area thanking plaintiff for helping him revise his area's customer satisfaction questions, and their driver analysis plan, to fit into the new customer satisfaction research standards.

Verification

I, Steven R. Kincaid, am the plaintiff in this action. I have read the foregoing Supplemental Answers to Interrogatories. To the best of my present recollection, knowledge, understanding and belief, the foregoing Supplemental Answers are true.

Signed under the penalties of perjury this 3<sup>rd</sup> day of October, 2005.

  
Steven R. Kincaid

As to objections:

---

David J. Fine, BBO #165120  
Law Offices of David J. Fine  
3 Center Plaza, Suite 400  
Boston, MA 02108-2003  
(617) 720-2941

Attorney for Plaintiff

Certificate of Service

I hereby certify that I have this day served the foregoing by causing true copies thereof to be transmitted electronically and mailed, first class postage prepaid, to Richard F. Kane and Steven T. Ackermann, Esqs., McGuire Woods LLP, Bank of America Corporate Center, 100 North Tryon Street, Suite 2900, Charlotte, NC 28202, attorneys for defendant.

Dated: October \_\_\_\_, 2005

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David J. Fine

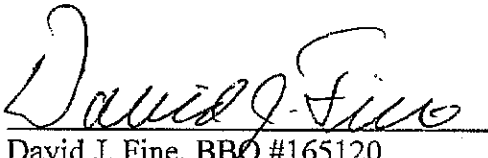
Verification

I, Steven R. Kincaid, am the plaintiff in this action. I have read the foregoing Supplemental Answers to Interrogatories. To the best of my present recollection, knowledge, understanding and belief, the foregoing Supplemental Answers are true.

Signed under the penalties of perjury this \_\_\_\_\_ day of October, 2005.

\_\_\_\_\_  
Steven R. Kincaid

As to objections:



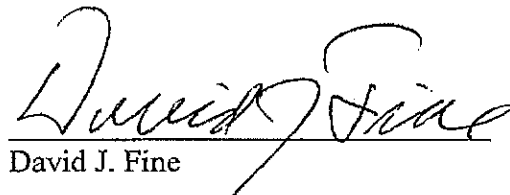
David J. Fine, BBO #165120  
Law Offices of David J. Fine  
3 Center Plaza, Suite 400  
Boston, MA 02108-2003  
(617) 720-2941

Attorney for Plaintiff

Certificate of Service

I hereby certify that I have this day served the foregoing by causing true copies thereof to be transmitted electronically and mailed, first class postage prepaid, to Richard F. Kane and Steven T. Ackermann, Esqs., McGuire Woods LLP, Bank of America Corporate Center, 100 North Tryon Street, Suite 2900, Charlotte, NC 28202, attorneys for defendant.

Dated: October 3, 2005

  
David J. Fine

## **EXHIBIT C**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

STEVEN R. KINCAID,

Plaintiff,

vs.

BANK OF AMERICA CORPORATION,

Defendant.

C.A. No. 04CV11522 WGY

**JOINT PRETRIAL MEMORANDUM**

**1. Concise Summary Of The Evidence To Be Offered**

**a. Plaintiff**

**b. Defendant**

Defendant expects to offer evidence that Plaintiff was hired by Sheila Burroughs in August 2002, when he was 49 years of age and that he was terminated by Ms. Burroughs in June 2003, when he was still 49 years old. In his position, Ms. Burroughs expected Plaintiff to be a leader within the Bank and to work with and influence the Bank's senior executives across its various product lines to identify and implement strategies to increase the satisfaction the Bank's customer's felt for the Bank.

Although Plaintiff was good at analyzing data about the Bank's customers and demonstrated a high competency at being a project manager, his job required more. Specifically, the job required an ability to translate the customer survey data into relevant information and communicate that relevant information to the Bank's senior executives to influence their business decisions.

Throughout Plaintiff's employment, he and Ms. Burroughs met on a weekly basis to develop his performance goals and to discuss his progress against those goals. In October or November, after only a couple of months in his position, Ms. Burroughs rated Plaintiff "solid," or in the middle of a 5 point performance rating scale. Over the course of the next several months, it became clear to Ms. Burroughs that Plaintiff was not demonstrating the leadership within the Bank that his position required. As a result, Ms. Burroughs rated Plaintiff as "needs improvement" in his performance review for the first quarter of 2003 and put him on a written performance warning. Ms. Burroughs continued to meet with Plaintiff on a weekly basis and coached and counseled him in the areas of his performance that needed improvement. After two months and no sustained improvement in Plaintiff's performance, Ms. Burroughs terminated Plaintiff's employment with the Bank.

Plaintiff did not complain directly to anyone at the Bank that he felt Ms. Burroughs' criticisms of him were motivated by her age discrimination. Instead, Plaintiff retained an attorney who wrote a letter to another the Bank's highest ranking personnel executive, who forwarded it to the Bank's in-house counsel, Eric Montgomery. Mr. Montgomery did not share the contents of the attorney letter with Ms. Burroughs until after the Plaintiff's termination, and Ms. Burroughs knew nothing of the Plaintiff's allegations from any other source until after his termination.

Plaintiff has failed to mitigate his damages by failing to look for comparable work. Defendant expects the evidence to show that in the more than two years since his termination, Plaintiff has looked for work at only a handful of companies and instead of taking a different type of position, he has accepted work teaching a GED course at a much reduced salary and has not searched diligently for comparable work. Plaintiff did not sustain any damages related to



emotional distress and any distress he was feeling was associated with his divorce and custody and visitation issues related to his children.

**2. Established Facts**

- a. Plaintiff was hired in August 2002 as a market information manager for Bank of America in its customer satisfaction group.
- b. Plaintiff's supervisor was Sheila Burroughs.
- c. At the time of hire by Bank of America, Plaintiff was 49 years old.
- d. At the time of his termination by Bank of America, Plaintiff was 49 years old.
- e. Plaintiff received a rating of "needs improvement" for his first quarter 2003 performance review. The rating was prepared by Sheila Burroughs.
- f. Plaintiff was given a written performance warning by Sheila Burroughs in April 2003.
- g. Plaintiff was terminated by Sheila Burroughs on June 13, 2003.

**3. Contested Issues Of Fact**

- a. Whether Plaintiff was terminated because of his age.
- b. Whether Plaintiff was terminated because his attorney wrote a letter to the Bank complaining about age discrimination with respect to his performance review and rating and performance warning.
- c. Whether Plaintiff suffered any damages because of his termination.
- d. Whether Plaintiff failed to mitigate his damages.

**4. Jurisdictional Questions**

- a. Whether Plaintiff failed to file his Complaint alleging age discrimination and retaliation within the time period allowed under ADEA and therefore whether this court has

jurisdiction over Plaintiff's claims under ADEA. 29 U.S.C. § 616(d) and (e). See Defendant's Motion For Summary Judgment.

**5. Questions Raised By Pending Motions**

Defendant has filed a motion for summary judgment. That motion raises the following issues with respect to liability:

**6. Issues of Law/Evidentiary Questions**

**a. Plaintiff—**

1. Whether the Massachusetts law of privilege applies to this case such that, an adverse inference may be drawn against the Bank based on the Bank's withholding, on ground of privilege, documents reflecting the Bank's internal investigation of Mr. Kincaid's claims of age discrimination, retaliation and harassment.

2. Whether the jury should be instructed that an inference adverse to the Bank may be drawn based on the Bank's failure to issue a preserve-evidence instruction to its employees and based on the Bank's destruction of e-mail evidence.

See Zubulake v. UBS Warburg LLC, 2004 WL 1620866 (U.S.Dist.Ct., S.D.N.Y. 2004)

3. Whether the Bank should be ordered to pay the costs of depositions or re-depositions required on account of the Bank's late production of discovery.

See id.

**b. Defendant--**

1. Whether Defendant is entitled to judgment as a matter of law on Plaintiff's claim under ADEA for age discrimination because Plaintiff is not able to produce sufficient evidence from which a reasonable jury could find that he was terminated because of his age.

2. Whether Defendant is entitled to judgment as a matter of law on Plaintiff's claim under ADEA for retaliation because Plaintiff is not able to produce sufficient evidence from which a reasonable jury could find that he was terminated in retaliation for his attorney's letter.

3. Whether Defendant is entitled to judgment as a matter of law on Plaintiff's claim for wrongful termination in violation of public policy under North Carolina law because he is not able to produce sufficient evidence from which a reasonable jury could find he was terminated because of his age.

4. Whether Defendant is entitled to judgment as a matter of law on Plaintiff's claim for violation of the implied covenant of good faith and fair dealing under North Carolina law because North Carolina does not recognize such a covenant in at-will employment.

5. Whether Plaintiff failed to file his Complaint alleging age discrimination and retaliation within the time period allowed under ADEA and therefore whether this court has jurisdiction over Plaintiff's claims under ADEA. 29 U.S.C. § 616(d) and (e). See Defendant's Motion For Summary Judgment.

Defendant expects to contest the admissibility and relevance of documents Plaintiff seeks to enter as evidence. When Defendant receives Plaintiff's list of proposed exhibits, Defendant will supplement this section of the pretrial memorandum.

**7. Requested Amendments To The Pleadings**

**a. Plaintiff—**

Plaintiff requests leave to amend his Complaint to add the following Count for negligent infliction of emotional distress under North Carolina law:

**COUNT FIVE  
NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS**

55. Plaintiff repeats and realleges the allegations contained in each of the preceding paragraphs of this Complaint.

56. In acting as it did, defendant: (a) negligently engaged in conduct; (b) it was reasonably foreseeable that such conduct would cause the plaintiff severe mental anguish and emotional distress; and (3) the conduct did in fact cause the plaintiff severe mental anguish and emotional distress.

57. The acts of defendant that foreseeably caused plaintiff severe mental anguish and emotional distress included, without limitation,

- a. pressuring plaintiff not to attend the funeral of his grandmother;
- b. threatening to terminate plaintiff's employment, and then actually terminating plaintiff's employment, on the purported ground that his job performance had been substandard, deficient and unsatisfactory, when, in actuality, his job performance had been excellent and the reasons for threatening to terminate his employment, and actually terminating his employment, had nothing to do with the quality of his work;
- c. assuring plaintiff that he would have 90 days to improve the quality of his job performance to a satisfactory level and then terminating his employment in fewer than 90 days on the purported basis that it had become clear that plaintiff was not making sufficient progress in improving the quality of his performance when the actual reason for cutting short his time to improve, was defendant's fear the plaintiff was about to file a disability claim and defendant wanted to be sure to terminate plaintiff's performance before he could do so;
- d. assuring plaintiff in writing on April 30, 2003 that defendant was "investigating the facts and circumstances" of plaintiff's written April 25, 2003 discrimination claim and that defendant would "respond" to that claim "shortly" when, in actuality, defendant

had done nothing to investigate plaintiff's claim and would do nothing to investigate or respond to plaintiff's claim until after plaintiff was terminated on June 13, 2003.

58. The mental anguish and emotional distress resulting from defendant's actions caused plaintiff to sustain, among other things, a voice disorder in December 2004 which made it extremely difficult for plaintiff to speak at all for several months and which has continued to have an adverse impact on plaintiff's ability to speak to this day.

**b. Defendant—none.**

**8. Additional Matters To Aid Disposition**

**a. Remaining Discovery Plaintiff is Expecting**

- i. Supplemental deposition of Vipin Mayar
- ii. Defendant's providing remainder of discovery compelled by Court's 9/8/05 Order
- iii. Defendant's providing information re posting and filling of positions of Sheila Burroughs and Allison Hart in Customer Satisfaction unit
- iv. Defendant's supplementation of privilege log
- v. Defendant's production of written complaint made by Erin McCarthy referred to by Alec Kotopoulos in his deposition

**b. Remaining Discovery Defendant is Expecting**

- i. Supplemental deposition of plaintiff
- ii. Plaintiff's supplementation of interrogatory answer regarding damages

**9. Probable Length Of Jury/Non-Jury Trial**

Jury trial

Plaintiff's estimate of length: 8 days

Defendant's estimate of length: 8 days

**10. Witnesses**

**a. Plaintiff**

Fact Witnesses

- i. Plaintiff Steven R. Kincaid  
8 Towne Lane  
Topsfield, MA 01983
- ii. Alec Kotopoulos (former Bank employee)  
[to be inserted]  
\_\_\_\_\_, MA  
  
live or by deposition
- iii. Sheila Burroughs (current Bank employee)  
Charlotte, NC  
  
live or by deposition
- iv. Vipin Mayar (former Bank employee)  
[to be inserted]  
  
live or by deposition
- v. Elizabeth Janak (current Bank employee)  
Davidson, North Carolina  
  
live or by deposition
- vi. Eric Montgomery (current Bank employee)  
Charlotte, NC  
  
live or by deposition
- vii. Daniel Dupre (current Bank employee)  
Charlotte, NC  
  
live or by deposition
- viii. Christine Lamano (current Bank employee)  
Charlotte, NC  
  
live or by deposition

ix. Timothy Megyesy (current Bank employee)  
Pittsburgh, PA

live or by deposition

x. Erik Fine (current Bank employee)  
Charlotte, NC

live or by deposition

xi. Marilyn Kincaid (plaintiff's sister)  
120 Settlers Trail  
Morgantown, PA 19543

xii. other fact witnesses  
[to be inserted]

Expert Witnesses

[to be inserted]

**b. Defendant's Witnesses**

Sheila Burroughs  
Current employee of Defendant  
C/o Siobhan Sweeney  
Edwards & Angell, LLP  
101 Federal Street  
Boston, MA 02110

Eric Montgomery  
Current employee of Defendant  
C/o Siobhan Sweeney  
Edwards & Angell, LLP  
101 Federal Street  
Boston, MA 02110

Allison Hart  
Current employee of Defendant  
C/o Siobhan Sweeney  
Edwards & Angell, LLP  
101 Federal Street  
Boston, MA 02110

Susan Haloulos  
Current employee of Defendant  
C/o Siobhan Sweeney  
Edwards & Angell, LLP  
101 Federal Street  
Boston, MA 02110

Tim Megyesy  
Current employee of Defendant  
C/o Siobhan Sweeney  
Edwards & Angell, LLP  
101 Federal Street  
Boston, MA 02110

Elizabeth Janak  
Current employee of Defendant  
C/o Siobhan Sweeney  
Edwards & Angell, LLP  
101 Federal Street  
Boston, MA 02110

Kathryn Little  
Current employee of Defendant  
C/o Siobhan Sweeney  
Edwards & Angell, LLP  
101 Federal Street  
Boston, MA 02110

Daniel Dupre  
Current employee of Defendant  
C/o Siobhan Sweeney  
Edwards & Angell, LLP  
101 Federal Street  
Boston, MA 02110

Erik Fine  
Current employee of Defendant  
C/o Siobhan Sweeney  
Edwards & Angell, LLP  
101 Federal Street  
Boston, MA 02110

Vipin Mayar  
New York, New York



Alec Kotopoulos  
Marlborough, MA

Other Fact Witnesses:

[To be inserted]

Expert Witnesses:

[To be inserted].

Defendant reserves the right to amend and supplement this list of witnesses. Defendant reserves the right to call any witness listed by Plaintiff.

**11. Proposed exhibits—Not Agreed To**

Not Yet Evaluated for Potential Objections

1. Bank of America Applicant Acknowledgment Form for Steven Kincaid dated 6/27/02
2. 7/22/02 job offer letter from Bank of America to Steven Kincaid
3. 10/4/02 Nomination of Steven Kincaid by Susan Haloulos for recognition
4. 11/6/02 e-mail from Erik Fine to Vipin Mayar
5. 4/3/03 e-mail from Alan Church to Steven Kincaid
6. Pages regarding posting of new position applied for and ultimately obtained by Allison Hart
7. April 2003 Performance Plan & Evaluation Form for Steven Kincaid for review period Q1 2003
8. April 2003 memorandum entitled "Overall Rating: Needs Improvement/Does Not Meet Expectations"
9. 4/16/04 [actually 4/16/03] Associate Counseling memorandum regarding Steven Kincaid
10. Performance management memorandum regarding Steven Kincaid opened 4/8/03, closed 7/8/03

11. 4/25/03 letter from Deborah Martin Norcross to J. Steele Alphin regarding Steven Kincaid
12. 4/30/03 letter from Eric Montgomery to Deborah Martin Norcross regarding Steven Kincaid
13. 5/20/03 letter from Deborah Martin Norcross to Eric Montgomery regarding Steven Kincaid
14. 6/12/03 e-mail from Allison Hart to team (including Steven Kincaid) regarding her new position
15. Pages regarding posting of new position applied for and ultimately obtained by Sheila Burroughs
16. 7/22/03 letter from Martha W. Moore to Deborah Martin Norcross regarding Steven Kincaid
17. 8/18/03 e-mail from Elizabeth Janak to Alec Kotopoulos and 8/18/03 responding e-mail from Alec Kotopoulos to Elizabeth Janak
18. Personnel file for Alec Kotopoulos
19. 6/3/04 letter from Vicki Rowan to Eric Montgomery regarding Emil Becker
20. Sexual Harassment and Discrimination Policy for Bank of America

Defendant reserves the right to review this list and to object to any documents and to propose other documents not included herein.

Steven R. Kincaid  
Plaintiff  
By his attorneys

Bank of America Corp.  
Defendant  
By its attorneys

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David J. Fine (BBO No. 165120)  
Law Offices of David J. Fine

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Siobhan Sweeney (BBO No. 562118)  
Edwards & Angell, LLP

Three Center Plaza, Suite 400  
Boston, MA 02108  
(617) 720-2941

101 Federal Street  
Boston, MA 02110  
(617) 439-4444

Mark Pogue  
Edwards & Angell, LLP  
2800 Financial Plaza  
Providence, RI 02903  
(401) 274-9200

## **EXHIBIT D**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
NO. 04 CV 11522 (JLT)

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STEVEN R. KINCAID,

Plaintiff,

vs.

BANK OF AMERICA CORPORATION,

Defendant.

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**AFFIDAVIT OF RICHARD F. KANE**

I, Richard F. Kane, declare as follows:

1. I am a partner with the law firm of McGuireWoods LLP, which is counsel to Defendant Bank of America in this case. I have personal knowledge of the facts set forth below.

2. On March 9, 2005, Plaintiff served his responses to Defendant's First Requests For Production of Documents. Defendant's requests included a demand for the production of medical records. Plaintiff objected to the requests but did provide a document reflecting a scheduled appointment with Joseph Parisi, Ph.D. On March 18, 2005, my law firm prepared the attached Release for use in this case and sent it to the Plaintiff's lawyer, David Fine, to be executed by the Plaintiff. Mr. Fine returned the release, signed by his client, on May 19, 2005.

3. Because the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires that releases authorizing the release of medical information contain an expiration date, we included in the release provided to the Plaintiff an expiration date of September 15, 2005. The September 15, 2005 date was selected because, at the time the release was prepared, discovery in this case was scheduled to close on July 2, 2005. At the time the

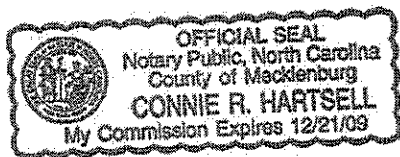
release was prepared, therefore, the September 15, 2005 expiration date was more than sufficient to enable Bank of America to obtain records from Dr. Parisi during the discovery period. Once such records were properly obtained pursuant to the release, my view was that they could be used in this case without the necessity of obtaining a separate, additional release from the Plaintiff.

  
Richard F. Kane

SWORN TO and subscribed  
before me this the 4th day  
of January, 2006.

  
Notary Public

My Commission expires: 12/21/09



## **EXHIBIT E**

**HIPAA AUTHORIZATION FORM FOR  
RELEASE OF MEDICAL INFORMATION**

I, Steven R. Kincaid, hereby authorize the use or disclosure of my individually identifiable health information as described below. I understand that this authorization is voluntary. I understand that if the organization authorized to receive the information is not a health plan or health care provider, the released information may no longer be protected by federal privacy regulations.

1. The following specific person or class of persons or facility is authorized to make the requested use or disclosure:

**NAME OF PERSON OR FACILITY:**

Joseph A. Parisi, Ph.D.

**ADDRESS:**

Charlotte Behavioral Health Associates  
517 South Sharon Amity Road, Suite 105  
Charlotte, North Carolina 28211

2. The following persons or class of persons may receive disclosure of protected health information about me:

Richard F. Kane  
Steve Ackermann  
McGuire Woods LLP  
100 N. Tryon Street, Suite 2900  
Bank of America Corporate Center  
Charlotte, North Carolina 28202

David J. Fine  
Law Offices of David J. Fine  
3 Center Plaza, Suite 400  
Boston, Massachusetts 02108

George P. Kostakos  
Edwards & Angell, LLP  
2800 Financial Plaza  
Providence, Rhode Island 02903

3. The specific information that should be disclosed is: All medical or psychological or counseling records, x-rays, diagnostic studies, laboratory slides, documents, reports, clinical abstracts, histories, intake forms, charts and billing records which they may request relative to my past, present or future physical condition, treatment, care and/or hospitalizations and to allow them to procure or copy whatever medical records, x-rays, slides or other documents you have. I understand that I am authorizing the release of medical records which may contain



information relating to the results of blood testing, including results of HIV testing.

4. I understand that the documents disclosed may be subject to re-disclosure by the person or class of persons or facility receiving them, and would then no longer be protected by federal privacy regulations.
5. I may revoke this authorization by notifying Joseph A. Parisi, Ph.D. in writing of my desire to revoke it. However, I understand that any action already taken in reliance on this authorization cannot be reversed, and my revocation will not affect those actions. I understand that the medical provider to whom this authorization is furnished may not condition his treatment of me on whether or not I sign the authorization.
6. This authorization expires on September 15, 2005.

Steven R. Kincaid  
Steven R. Kincaid

5/9/05  
Date:

7/19/53  
Date of Birth: 7/9/53

442-56-2606  
Social Security Number: 442-56-2606

## **EXHIBIT F**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

STEVEN R. KINCAID,

Plaintiff,

vs.

BANK OF AMERICA CORPORATION,

Defendant.

CA No. 04 CV 11522 WGY

**DEFENDANT'S MOTION FOR PERMISSION TO FILE  
TREATMENT NOTES UNDER SEAL**

Defendant Bank of America Corporation ("Bank of America" or "the Bank") hereby moves for permission to file treatment notes under seal. The Bank states that said treatment notes (the "Notes") are presently the subject of its motion for leave to utilize previously disclosed psychiatric treatment notes pertaining to the Plaintiff, and to question the Plaintiff's psychiatrist regarding those Notes, during the trial of this case ("Motion").

Out of an abundance of caution, the Bank requests the Court's permission to file these Notes contemporaneously with its Motion, but under seal. Accordingly, the Bank attaches the Notes hereto in a separate, sealed envelope marked as Exhibit 1. If the Court grants the Banks Motion, and allows the use of previously disclosed psychiatric treatment notes pertaining to Plaintiff, and to question Plaintiff's psychiatrist regarding those Notes, during trial of this case, the Bank respectfully requests that the Court unseal the Notes for use in this case.

BANK OF AMERICA CORPORATION,  
Defendant  
By its attorneys,

/s/Siobhan Sweeney  
Siobhan Sweeney  
BBO No. 562118  
Mark Pogue  
BBO No.  
Edwards Angell Palmer & Dodge, LLP  
101 Federal Street  
Boston, MA 02110  
Phone: 617.439.4444  
Fax: 617.439.4170

Richard F. Kane (admitted pro hac vice)  
Steven T. Ackermann (admitted pro hac vice)  
McGuireWoods LLP  
Bank of America Corporate Center  
100 North Tryon Street, Suite 2900  
Charlotte, North Carolina 28210  
Telephone: 704.373.8999  
Facsimile: 704.373.8827

Dated: January 4, 2006.

Certification of Conference Pursuant to LR 7.1

I hereby certify that prior to filing, the parties, through their counsel, have conferred with respect to Defendant's Motion For Permission To File Treatment Notes Under Seal and the issues raised therein, in an effort to narrow the areas of disagreement.

/s/ Siobhan Sweeney

## **EXHIBIT G**

Volume II, Pages 1-125

Exhibits 10-11

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

NO. 04 CV 11522 (WGY)

STEVEN R. KINCAID, )

Plaintiff, )

Vs. )

BANK OF AMERICA CORPORATION, )

Defendant. )

DEPOSITION OF: STEVEN R. KINCAID  
EDWARDS, ANGELL, PALMER & DODGE, LLP

101 Federal Street

Boston, Massachusetts

November 8, 2005 11:15 a.m.

REPORTED BY: SONYA LOPES/CSR

Steven R. Kincaid

November 8, 2005

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APPEARANCES:

Representing the Plaintiff:

LAW OFFICES OF DAVID J. FINE

BY: DAVID J. FINE, ESQ.

Three Center Plaza, Suite 400

Boston, Massachusetts 02108-2003

(617) 720-2942

Representing the Defendant:

EDWARDS, ANGELL, PALMER & DODGE, LLP

BY: SIOBHAN SWEENEY, ESQ.

101 Federal Street

Boston, Massachusetts 02110

(617) 439-4444

Steven R. Kincaid  
November 8, 2005

3

I N D E X

WITNESS:	EXAMINATION BY:	PAGE:
STEVEN R. KINCAID	MS. SWEENEY	5

EXHIBITS:	PAGE:
Exhibit 10, report.....	68
Exhibit 11, Answers to Interrogatories.....	120

(All exhibits retained by Ms. Sweeney)



1 Q. What do you mean by that?

2 A. We communicate for business purposes,  
3 purposes of child transportation, child care, child  
4 welfare.

5 Q. Did you ever seek any counseling with  
6 respect to any emotional distress damages you allege  
7 you suffered?

8 A. Yes, I did.

9 Q. And when did you do that?

10 A. It was in the early part of the year in  
11 2003. It was after I had been notified by the bank  
12 that my performance was being questioned by  
13 Ms. Burroughs?

14 Q. And who did you seek counseling with?

15 A. Well, I had one appointment with a  
16 gentleman named Dr. Parisi.

17 Q. And did you have any other counseling?

18 A. No, I did not.

19 Q. So Dr. Parisi was the only doctor that you  
20 sought counseling from --

21 A. That's right.

22 Q. -- with respect to alleged emotional  
23 distress? Yes?

24 A. Yes.

1 MS. SWEENEY: Can I get this one marked?

2 (Report, Exhibit 10, marked)

3 BY MS. SWEENEY:

4 Q. Do you want to take a look at Exhibit

5 No. 10? And if you could read that over for me.

6 Let me know when you're done.

7 A. Okay.

8 Q. You've read the entire document?

9 A. Yes, I've read it.

10 \* Q. And is this the consultation you had with  
11 Dr. Parisi that you testified about related to  
12 emotional distress as a result of anything that Bank  
13 of America did to you?

14 MR. FINE: Objection.

15 A. Yes.

16 MR. FINE: Miss Sweeney asked a long  
17 question.

18 MS. SWEENEY: David, under the federal  
19 rules, you may object to the form of the question.  
20 But you cannot instruct your client how to answer it  
21 or to coach your client.

22 MR. FINE: Miss Sweeney, I think it was  
23 an unfair question.

24 MS. SWEENEY: Fine. Duly noted.

1 MR. FINE: Could you please read back  
2 the question? And, Mr. Kincaid, please listen to  
3 the whole question.

4 MS. SWEENEY: Enough David.

5 \* (Question read back)

6 A. I guess I don't recall testifying about  
7 this, so I guess the answer's no.

8 BY MS. SWEENEY:

9 Q. Did you just testify that you saw  
10 Dr. Parisi in 2003 for counseling?

11 A. Uh-huh.

12 MR. FINE: You need to verbalize.

13 A. Yes, I did.

14 BY MS. SWEENEY:

15 Q. And was that counseling related to  
16 emotional distress that you are claiming was caused  
17 by Bank of America?

18 MR. FINE: Objection. And let the  
19 record note that at the time that Mr. Kincaid sought  
20 this counseling, he had made -- filed no lawsuit  
21 against the Bank of America.

22 MS. SWEENEY: David, enough.

23 MR. FINE: Miss Sweeney, you're asking  
24 an unfair question in an unfair way.

1 BY MS. SWEENEY:

2 Q. Mr. Kincaid --

3 MR. FINE: In fact -- excuse me. In  
4 fact --

5 MS. SWEENEY: Enough.

6 MR. FINE: You're raising your voice  
7 now, which is inappropriate. What the record does  
8 not reflect because there isn't a tape-recording was  
9 that when Miss Sweeney first asked this question,  
10 she asked the first part of the question in a  
11 regular tone of voice. And then when she added the  
12 coda at the end with regard to emotional distress  
13 caused by the Bank of America, she dropped her  
14 voice.

15 So it seemed to me that there was an  
16 effort on the part of Ms. Sweeney in the way that  
17 she asked the question to mislead the witness and to  
18 ask an unfair question.

19 BY MS. SWEENEY:

20 Q. Mr. Kincaid, did you suffer any emotional  
21 distress as a result --

22 MR. FINE: Excuse me. Let the record  
23 reflect that Miss Sweeney's tone of voice has  
24 changed. She's now speaking in a loud and

Steven R. Kincaid  
November 8, 2005

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1 aggressive way, which is totally out of keeping with  
2 the way that she's asked questions up until now.  
3 And I object to the tone of voice and to the way  
4 she's asking the question. There's no need --

5 MS. SWEENEY: You have cut me off  
6 enough, David.

7 BY MS. SWEENEY:

8 Q. Mr. Kincaid --

9 MR. FINE: Excuse me. Excuse me. Let  
10 the record reflect that notwithstanding my request  
11 that Miss Sweeney use a normal tone of voice, she  
12 continues to raise her voice and speak in a loud and  
13 aggressive fashion, which I believe is totally  
14 inappropriate for a deposition. And if she does not  
15 stop doing that, we're just going to walk out.

16 BY MS. SWEENEY:

17 Q. Mr. Kincaid, did you suffer any emotional  
18 distress as a result of anything that Bank of  
19 America did to you? Yes or no?

20 MR. FINE: Let the record reflect that  
21 when Miss Sweeney added the yes or no, she reverted  
22 to the loud and aggressive tone she had used before  
23 that I asked her to stop using.

24 BY MS. SWEENEY:

Steven R. Kincaid  
November 8, 2005

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1 Q. Please answer the question, Mr. Kincaid.

2 A. Yes.

3 Q. What emotional distress did you suffer?

4 A. I suffered emotional distress as a result  
5 of being without a job; as a result of, you know,  
6 loss of self-esteem among people I spent time with  
7 and social friends in my community because I was  
8 unemployed for a period of time.

9 I felt that my children looked at me  
10 differently because I was at least for a while not a  
11 breadwinner and not somebody who was a person they  
12 could look up to.

13 I felt like the incidents of harassment I  
14 had been through at the Bank of America kind of left  
15 me with, I guess you could say, emotional scars.  
16 Because I guess I kind of had been turned on, I  
17 guess you might say, by people I had trusted and  
18 that I had sacrificed a great deal for, moved to  
19 another state, been separated from my family, et  
20 cetera. So there are a number of different ways, I  
21 guess, I felt like that it affected me.

22 Q. Did you consult with anyone as a result of  
23 that emotional distress?

24 A. During the time I was employed by the bank,

1 I went to see Dr. Parisi.

2 Q. Did you consult with Dr. Parisi as a result  
3 of emotional distress you claim you suffered due to  
4 Bank of America?

5 A. When I talked to Dr. Parisi, the purpose  
6 for the visit was to see if it was fruitful or  
7 helpful for us to continue or to establish an, I  
8 guess you'd call it, doctor-patient relationship.

9 The reason of the visit wasn't, I guess you  
10 might say, to reach a therapeutic outcome. It was  
11 more to see whether or not it was desirable or  
12 helpful to meet again.

13 Q. And what did you tell Dr. Parisi about Bank  
14 of America?

15 A. Well, I told him that I was going through a  
16 very difficult time at my job and that I felt like I  
17 was being treated very unfairly. And I felt like  
18 because my actions the things I could control at  
19 work that would -- well, not that I could control at  
20 work but didn't really have any affect on the  
21 outcome. I felt that my supervisor had already  
22 decided that she wanted me to leave the employ of  
23 the Bank of America, that it made me feel depressed  
24 because I couldn't really do anything to alter the

1 outcome. I felt like the decision had already been  
2 made.

3 Q. Did you tell them anything about your  
4 ex-wife and your children?

5 A. I mentioned that I missed my children. I  
6 didn't miss my ex-wife, but I did miss my children.

7 Q. How did you get referred to Dr. Parisi?

8 A. There were a list of doctors or  
9 psychologists that were in a book that the health  
10 plan -- I think it was UnitedHealthcare -- provided.  
11 And I called several until I found one that would  
12 see me and that was close by.

13 Q. What other doctors did you call for  
14 appointments?

15 A. Oh, I really can't remember. It was too  
16 long ago. I probably called a couple of others and  
17 settled on Dr. Parisi.

18 Q. And was Dr. Parisi a psychologist?

19 A. I believe that he was, yeah.

20 Q. And how old was Dr. Parisi?

21 A. I guess he was in his 40s, maybe early 50s.

22 Q. Isn't it true at the time that you saw  
23 Dr. Parisi, your chief complaint was about your wife  
24 and your children?



1 MR. FINE: Objection.

2 A. No. I would say that wasn't true.

3 BY MS. SWEENEY:

4 \* Q. Can you provide any explanation as to why  
5 it is that Dr. Parisi doesn't mention anything in  
6 his record about the troubles you were having at  
7 work?

8 MR. FINE: I want to object again. For  
9 some reason, Miss Sweeney, in the last ten  
10 minutes --

11 MS. SWEENEY: David -- David --

12 MR. FINE: Excuse me.

13 MS. SWEENEY: Can we ask your client to  
14 leave the room while you put your long, expansive  
15 objection on the record?

16 MR. FINE: No.

17 MS. SWEENEY: Then I am going to ask you  
18 to please stop coaching your witness.

19 MR. FINE: Miss Sweeney, I will say what  
20 I feel it is my -- it is appropriate for me to say.  
21 I'm not going to be censored or lectured by you.

22 MS. SWEENEY: By rules of civil  
23 procedure?

24 MR. FINE: One of the things that it is

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1 completely appropriate to do under the rules of  
2 civil procedure in every decision that I've read is  
3 that when you feel that a questioner is abusing your  
4 client, harassing your client, asking questions in  
5 an inappropriate way, it is perfectly appropriate to  
6 point that out on the record. And that's what I'm  
7 doing.

8           For some reason, you asked your  
9 questions for the first hour and a half of this  
10 deposition in a totally appropriate, factual way.  
11 For some reason, in the last 15 minutes, you have  
12 become rhetorical. You've become aggressive. And  
13 you've become harassing, particularly given the  
14 sensitivity of the subject matter which is -- now  
15 you're asking the witness about a psychological  
16 evaluation that deals with extremely personal  
17 information.

18           The fact that you have become rhetorical  
19 on this subject is really unaccountable,  
20 inappropriate. And I ask you to stop it. And if  
21 you don't, we are walking out.

22           MS. SWEENEY: Could you read back the  
23 question, please?

24           \* (Question read back.)

1       A.     My memory from my visit with Dr. Parisi was  
2     that he seemed more interested in things that had a  
3     personal, emotional basis. And he seemed to have  
4     less interest in things related to jobs and  
5     profession.

6                 I got the feeling during the  
7     conversation that he kind of steered the  
8     conversation more toward my personal situation with  
9     my family. I distinctly recall because I was under  
10    severe pressure at my job that I mentioned to him at  
11    the outset of the meeting that that was one of the  
12    reasons that I was there.

13                My answer to your question can I provide  
14    any explanation about this is that I think -- I  
15    speculate, I guess, as a psychologist he seemed more  
16    interested in things that had an emotional basis  
17    with my family than with my job.

18   BY MS. SWEENEY:

19       Q.     Did you report to him that you were having  
20    -- that your difficulties began three years ago when  
21    you divorced your wife?

22       A.     When I went to Dr. Parisi, I mentioned that  
23    I was having a great deal of problems --

24       Q.     I'm sorry. I'm going to stop you there.

1 MR. FINE: No. Excuse me. It's  
2 inappropriate. You asked a question.

3 MS. SWEENEY: David.

4 MR. FINE: You're raising your voice.  
5 You are raising your voice again.

6 MS. SWEENEY: How can I be raising my  
7 voice when I can't even get a word in.

8 MR. FINE: You asked a question. The  
9 witness was in the middle of answering the question.  
10 It is inappropriate, in my opinion, for you to cut  
11 the witness off in the middle of his answering the  
12 question. I would --

13 MS. SWEENEY: Tell me when you're done.

14 MR. FINE: I will. If after the witness  
15 completes his answer to your question you feel that  
16 the answer was somehow non-responsive or  
17 inappropriate, then that is the time to point it out  
18 to the witness after he completes his answer, not to  
19 cut him off.

20 BY MS. SWEENEY:

21 Q. Let me ask my question another way. You  
22 did report to Dr. Parisi that you began having  
23 difficulty three years ago when you divorced your  
24 wife; correct?

1 MR. FINE: Objection.

2 A. What I reported to Dr. Parisi when I went  
3 for my visit was I was having a great deal of  
4 trouble at work and that problems currently occupied  
5 me, things at that time, things that were kind of  
6 present in my day-to-day life were the main reason I  
7 had come to see him.

8 As he questioned me about things bothering  
9 me, he asked me about my past and about other things  
10 that could be intermingled or mixed in with the  
11 problems I was having now. In response to questions  
12 like that, I told him about my personal history.

13 BY MS. SWEENEY:

14 Q. Could you read the first sentence of the  
15 paragraph called history of the problem?

16 A. Okay.

17 Q. Could you read that into the record?

18 A. David report --

19 MR. FINE: Excuse me. I object to this  
20 question. And I would like to note for the record  
21 that if Miss Sweeney is embarking upon a  
22 line-by-line exploration of this report as if it was  
23 a transcript of a deposition, at some point I am  
24 going to simply object and direct the witness not to

1 answer the question because I think it's abusive. I  
2 think that Miss Sweeney's whole line of questioning  
3 about this has been remarkably insensitive.

4 BY MS. SWEENEY:

5 Q. Could you read that first line, please?

6 A. Dave reports he began to have difficulty  
7 three years ago when he divorced his wife.

8 Q. Is that a true statement?

9 MR. FINE: Objection. Mr. Kincaid has  
10 already given an account of how -- what happened  
11 during the interview to elicit the information that  
12 is recorded there. I think that Miss Sweeney --  
13 essentially what Miss Sweeney is doing is attempting  
14 to cross-examine Mr. Kincaid and badger Mr. Kincaid.

15 It is not the purpose of a discovery  
16 deposition and is certainly not the circumstance  
17 under which I agreed to permit the bank to have a  
18 supplementary deposition of Mr. Kincaid.

19 BY MS. SWEENEY:

20 Q. Mr. Kincaid, can you answer my question?

21 MR. FINE: Do you have the question in  
22 mind, Mr. Kincaid?

23 A. You're asking me if the first statement is  
24 true?

1 BY MS. SWEENEY:

2 Q. Yes. Is that a true statement?

3 A. Yes. I would say that's a true statement.

4 Q. And did you report to Dr. Parisi that the  
5 divorce was your wife's idea and she never told you  
6 why she wanted it?

7 MR. FINE: Before Mr. Kincaid asks --  
8 answers this question, I'm going to ask you,  
9 Miss Sweeney, why are you asking that question.  
10 What relevance does this have to this case? And why  
11 is it that you feel that you are justified in asking  
12 questions based on this report when if the Bank of  
13 America had wanted to, they could have delayed  
14 Mr. Kincaid's deposition the first time until after  
15 this report was provided?

16 And I simply need to have an answer to that  
17 question because I am considering at this point  
18 simply directing the witness not to answer any  
19 further questions on this subject.

20 BY MS. SWEENEY:

21 Q. Mr. Kincaid, did you understand my  
22 question?

23 MR. FINE: I direct the witness not to  
24 answer the question.

1 BY MS. SWEENEY:

2 Q. Mr. Kincaid, did you report --

3 MR. FINE: Miss Sweeney --

4 MS. SWEENEY: I want to put --

5 MR. FINE: No. No. No. I have a  
6 question for you. Do you have any other subjects to  
7 cover other than this report?

8 MS. SWEENEY: Yes, I do, David. But I  
9 would like to get --

10 MR. FINE: Then --

11 MS. SWEENEY: David --

12 MR. FINE: Then fine. Then let's -- I'm  
13 directing the witness not to answer any further  
14 questions about this report. Shame on you,  
15 Miss Sweeney. Go on to another subject.

16 MS. SWEENEY: As to any question -- I  
17 just want to be clear for the record. As to any  
18 question I have about this particular report, which  
19 has been marked as Exhibit 10, you are stating that  
20 you will instruct your client not to answer those  
21 questions; correct?

22 MR. FINE: I'll tell you what. I will  
23 permit you to ask further questions to see whether  
24 you can do it in an appropriate way. If in my



1 judgment you continue to be insensitive and abusive,  
2 I will direct the witness not to answer any other  
3 questions. Essentially, I will give you one more  
4 chance.

5 MS. SWEENEY: Well, then, David, I think  
6 it's probably worth putting on the record what it is  
7 you will allow him to answer and what you won't. So  
8 I'll ask a series of questions, and you can simply  
9 direct him not to answer. And we will have it on  
10 the record.

11 MR. FINE: And please note, I mean, you  
12 seem to be particularly opaque about this,  
13 Miss Sweeney. If you have read this entire report  
14 from beginning to end, you know that this report  
15 contains enormously sensitive material. And the  
16 fact that of all the subjects in this case, you have  
17 chosen to be rhetorical about this subject in my  
18 view exhibits an extraordinary lack of judgment and  
19 insensitivity.

20 BY MS. SWEENEY:

21 Q. Did you report to Dr. Parisi that you had  
22 been in Charlotte for nine months and you missed  
23 your children so much that you planned to move back  
24 to the Boston area in August?

1 A. No. I didn't report that to him.

2 Q. Did you report anything similar along those  
3 lines to Dr. Parisi?

4 A. I said that I missed my children a great  
5 deal and that it had crossed my mind that it would  
6 be good to move back at some time to Massachusetts.  
7 I didn't say what's on this sheet of paper here.

8 Q. Do you have any idea where it is -- did you  
9 talk at all about the month of August with  
10 Dr. Parisi?

11 A. I said that -- in the context of describing  
12 the difficulties at work, I said that -- I said that  
13 I was considering the possibility that things might  
14 end badly at the Bank of America because I felt like  
15 they were really intent on driving me out of the  
16 organization. But I said sometimes things like this  
17 turn out differently than you think.

18 And as a supervisor that supervised other  
19 people, I myself in the past have had situations  
20 where a situation with an employee looked bleak and  
21 very dark and in the end it turned out okay. And I  
22 told him that based on my own experiences as a  
23 supervisor that I didn't want to toss out -- I  
24 wanted to keep my options open with the Bank of

1 America and I wanted to believe that despite the  
2 present bleak situation I could work things out with  
3 Sheila Burroughs and the bank and continue my  
4 employment.

5 I think this mention of Massachusetts and  
6 moving was in the context of a consideration or  
7 possibility, but I know I never said I was planning  
8 on leaving. My primary emphasis was on working out  
9 things with the Bank of America, not foreclosing the  
10 possibility.

11 Q. Did you tell Dr. Parisi that you planned to  
12 move back to the Boston area and live on the income  
13 generated from the sale of your home in  
14 Massachusetts?

15 A. I didn't say I planned to do it, no.

16 Q. Did you say that you were thinking about  
17 doing that?

18 A. I said it was a possibility if the  
19 situation with the bank in the last analysis or the  
20 way it finally turned out, if the situation turned  
21 out badly. But I did not say I planned to do it.

22 \* Q. And as compared to how you felt about  
23 yourself and your work and family lives before you  
24 moved to Charlotte, how did you feel while you were

1 there?

2 MR. FINE: Can we read back the  
3 question, please?

4 \* (Question read back)

5 MR. FINE: I'm going to direct the  
6 witness not to answer the question on the grounds  
7 that this is a subject that Mr. Kean could have  
8 covered at Mr. Kincaid's -- the first session of  
9 Mr. Kincaid's deposition.

10 BY MS. SWEENEY:

11 Q. At any time during your employment with  
12 Bank of America, did you have negative or angry  
13 feelings?

14 MR. FINE: I'm going to object and  
15 direct the witness not to answer the question on the  
16 same grounds, that Mr. Kean had an opportunity to  
17 take a full deposition of Mr. Kincaid. He did so.  
18 This is something he could have covered then, if he  
19 had wished.

20 BY MS. SWEENEY:

21 Q. Do you have negative and angry feelings  
22 now?

23 MR. FINE: Objection.

24 A. Sometimes, yeah.

1 BY MS. SWEENEY:

2 Q. And are they directed at anyone in  
3 particular?

4 A. Bank of America.

5 Q. Anyone else?

6 A. No. I guess I can't think of anybody right  
7 now.

8 Q. Have you ever considered taking medication  
9 for depression?

10 A. No one's ever suggested to me that I'd  
11 considered it. No. No medical person's ever  
12 suggested it to me, so I guess I can't say I have  
13 since no medical person's ever suggested it.

14 Q. Do you consider yourself to suffer from  
15 depression?

16 A. I guess I would say no.

17 Q. Have you ever considered yourself to suffer  
18 from depression?

19 A. I think there is short periods of time or  
20 events that have caused me to feel depressed, but I  
21 always bounced back eventually.

22 Q. And do you feel you've bounced back now  
23 from any depression you may have suffered as a  
24 result of your employment with Bank of America?

1 MR. FINE: Objection.

2 A. I'm going to say not completely, to some  
3 extent.

4 BY MS. SWEENEY:

5 \* Q. Can you tell me how it is that that  
6 depression manifest itself?

7 MR. FINE: Objection. Well, please, I'm  
8 going to make a comment for the record because I  
9 don't think that the questioner is being fair to the  
10 witness. The questioner first asked the witness a  
11 series of questions about depression. Witness  
12 answered those questions.

13 Now the questioner is asking further  
14 questions which seem not to take into account the  
15 answers that Mr. Kincaid gave previously.

16 MS. SWEENEY: Do you want to read back  
17 the question?

18 \* (Question read back.)

19 A. I guess I can just tell you I'm not a  
20 medical person, so I don't know all the medical  
21 details about depression. Compared to before I was  
22 with the Bank of America, I'm more reclusive. I  
23 don't spend time around people.

24 I guess I have some sense of loss of

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1 confidence in myself professionally because I got  
2 such a browbeating from Sheila Burroughs when I left  
3 the bank. Even when you believe in yourself and  
4 think you're a competent professional, when someone  
5 really goes out of their way to belittle you and to  
6 make you feel bad, some of it rubs off. I think  
7 some of it did rub off from Sheila Burroughs.

8 Some trouble sleeping, little loss of  
9 appetite. So there are different ways, I guess, in  
10 response to your question about manifest. When I  
11 think about the ways it shows up in my behavior, my  
12 physical life, that's what I would answer.

13 BY MS. SWEENEY:

14 Q. And how often does it manifest presently?

15 A. Well, it's on my mind a lot because with  
16 the Bank of America, because of the situation that  
17 occurred there -- the nature of my termination, in  
18 effect -- that was the end of my statistical market  
19 research career.

20 I'd been doing it 25 years. And when your  
21 career comes to a halt, kind of a screeching halt,  
22 that's kind of -- it leaves a mark on me. I don't  
23 know if other people react the same way but that was  
24 --

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1 Q. Go ahead.

2 A. That's -- I spent decades doing that. I  
3 feel like the nature of Bank of America's action  
4 kind of met the end of that.

5 Q. What did Bank of America --

6 MR. FINE: Had you finished your answer?

7 A. I finished, yeah.

8 BY MS. SWEENEY:

9 Q. Tell me what Bank of America did to keep  
10 you from continuing your career.

11 MR. FINE: I'm going to direct the  
12 witness not to answer the question. This is  
13 something Mr. Kean could have asked in the first  
14 session of his deposition.

15 BY MS. SWEENEY:

16 Q. You said your career came to a screeching  
17 halt. What did you mean by that?

18 MR. FINE: Object. Direct the witness  
19 to not answer the question. This all could have  
20 been covered in the first session of his deposition.

21 MS. SWEENEY: Not if he didn't testify  
22 to it.

23 MR. FINE: Move on, Miss Sweeney. Move  
24 on.



1 BY MS. SWEENEY:

2 Q. Other than seeing Dr. Parisi, have you  
3 sought any other professional help with respect to  
4 any emotional distress you've suffered from any  
5 cause?

6 A. Well, I guess indirectly I feel like the  
7 Bank of America's action had a result on my voice  
8 situation. So I went to see Dr. Postal, Dr. Farzan,  
9 Sheila Therrin. Aside from that series of doctor  
10 visits, no, I haven't.

11 Q. And when you saw Dr. Farzan and Dr. Postal  
12 and Sheila Therrin and now Dr., is it, Lucas?

13 A. Dr. Burns.

14 Q. Dr. Burns. When you saw them, did you tell  
15 them about what happened to you at Bank of America?

16 A. I told -- I mentioned it to Dr., I believe,  
17 Dr. Postal. But I may -- I know I mentioned it to  
18 Sheila Therrin because Dr. Postal was somewhat  
19 disinterested, I guess, in the nature of the cause  
20 of my voice problem. And he was more interested in  
21 just explaining what my options were.

22 Sheila, I guess, since she's a therapist  
23 had more interest in what caused it or inquired  
24 about what caused it. So I did talk to her about